



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/940,616	08/29/2001	David A. Braun	10017258-1	5965

7590 03/03/2009
HEWLETT-PACKARD COMPANY
Intellectual Property Administration
P.O. Box 272400
Fort Collins, CO 80527-2400

EXAMINER

POPE, DARYL C

ART UNIT	PAPER NUMBER
----------	--------------

2612

MAIL DATE	DELIVERY MODE
-----------	---------------

03/03/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DAVID A. BRAUN

Application No. 09/940,616
Technology Center 2600

Mailed: March 3, 2009

Before PAMELA S. BENNETT, *Review Team Paralegal*.
BENNETT, *Review Team Paralegal*.

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on February 9, 2009. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matters requiring attention prior to docketing.

APPEAL BRIEF, SUMMARY OF INVENTION

According to 37 CFR § 1.192(c) (5) (2004), an Appeal Brief must include the following:

(5) *Summary of invention*. A concise explanation of the invention defined in the claims involved in the appeal, which shall refer to the specification by page and line number, and to the drawing, if any, by reference characters.

The “Summary of invention” appearing on pages 4 and 5 of the Appeal Brief filed September 1, 2004 is deficient because it does not properly map the invention to the specification. Correction is required.

APPEAL BRIEF, APPENDIX

The Appeal Brief also reveals that claims 1, 2, 5-9, 13, 14, 16, 19 and 20 are not consistent as amended in the last entered amendment filed on November 21, 2002. The copy of the claims should be in proper format and should not include any markings such as brackets or underlining except for claims in a reissue application in accordance with 37 CFR § 1.192(c)(9). Appropriate correction of all claims provided in the Claims Appendix in proper format is required.

EXAMINER’S ANSWER, EVIDENCE RELIED UPON

Section §1207.02 of the *Manual of Patent Examining Procedure* (MPEP) (Eighth Edition, Rev. 4, October 2005) states:

(A) CONTENT REQUIREMENTS FOR EXAMINER’S ANSWER. The examiner’s answer is required to include,

under appropriate headings, in the order indicated, the following items:

. . . .

- (8) Evidence Relied Upon. A listing of the evidence relied on (e.g., patents, publications, admitted prior art), and in the case of nonpatent references, the relevant page or pages.

The Examiner's Answer mailed January 24, 2006 is deficient because the "Evidence Relied Upon" section fails to include the Lutes and Mozer references cited on page 3 in the Examiner's Answer's grounds of rejection of claims 1-3, 5-16, and 18-20 under 35 USC § 103(a) and the Puchek et al. reference cited on page 8 in the grounds of rejection of claims 14 and 17 under 35 U.S.C. § 103(a).

Appropriate correction is required.

CONCLUSION

Accordingly, it is **ORDERED** that the application is returned to the Examiner:

- 1) to hold the Appeal Brief filed September 1, 2004 defective;
- 2) to notify Appellant to submit an amended Appeal Brief which corrects the "Summary of invention" and "Appendix";
- 3) to acknowledge and consider the amended Appeal Brief;
- 4) to issue a PTO-90 citing the missing references listed under the "Evidence Relied Upon" section, paragraph (8); and
- 5) for such further action as may be appropriate.

Application No. 09/940,616

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

PSB

Hewlett-Packard Company
Intellectual Property Administration
P.O. Box 272400
Fort Collins, CO 80527-2400